

REFERENCE TITLE: guardianship; independent medical evaluation

State of Arizona
Senate
Fifty-sixth Legislature
Second Regular Session
2024

SB 1611

Introduced by
Senator Wadsack

AN ACT

AMENDING SECTIONS 14-5301.03 AND 14-5303, ARIZONA REVISED STATUTES;
RELATING TO GUARDIANSHIPS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 14-5301.03, Arizona Revised Statutes, is amended
3 to read:

4 14-5301.03. Judicial appointment of guardian; special
5 provision for incapacitated minors approaching
6 adulthood

7 A. A party that is interested in the welfare of a minor who is at
8 least seventeen years six months of age and who is alleged to be
9 incapacitated may initiate guardianship proceedings pursuant to this
10 article and request that any guardianship order take effect immediately on
11 the minor's eighteenth birthday.

12 B. The petitioner may provide with the petition a report of an
13 evaluation of the minor by a physician, psychologist or registered nurse
14 that meets the requirements of section 14-5303, subsection ~~F~~ F. If the
15 evaluation was conducted within six months after the date the petition is
16 filed with the court, the petitioner may ask in the petition that the
17 court accept this report in lieu of ordering any additional evaluation
18 pursuant to section 14-5303, subsection C, and the court may grant the
19 request.

20 Sec. 2. Section 14-5303, Arizona Revised Statutes, is amended to
21 read:

22 14-5303. Procedure for court appointment of a guardian of an
23 alleged incapacitated person

24 A. The alleged incapacitated person or any person interested in
25 that person's affairs or welfare may petition for the appointment of a
26 guardian or for any other appropriate protective order.

27 B. The petition shall contain a statement that the authority
28 granted to the guardian may include the authority to withhold or withdraw
29 life sustaining treatment, including artificial food and fluid, and shall
30 state, at a minimum and to the extent known, all of the following:

31 1. The interest of the petitioner.

32 2. The name, age, residence and address of the alleged
33 incapacitated person.

34 3. The name, address and priority for appointment of the person
35 whose appointment is sought.

36 4. The name and address of the conservator, if any, of the alleged
37 incapacitated person.

38 5. The name and address of the nearest relative of the alleged
39 incapacitated person known to the petitioner.

40 6. A general statement of the property of the alleged incapacitated
41 person, with an estimate of its value and including any compensation,
42 insurance, pension or allowance to which the person is entitled.

43 7. The reason why appointment of a guardian or any other protective
44 order is necessary.

45 8. The type of guardianship requested. If a general guardianship
46 is requested, the petition must state that other alternatives have been

1 explored and why a limited guardianship is not appropriate. If a limited
2 guardianship is requested, the petition also must state what specific
3 powers are requested.

4 9. If a legal decision-making, parenting time or visitation order
5 was previously entered regarding an alleged incapacitated person in a
6 marriage dissolution, legal separation or paternity action in this state
7 or another jurisdiction and the petitioner or proposed guardian is a
8 parent of the alleged incapacitated person or a nonparent who has been
9 awarded legal decision-making as to the alleged incapacitated person, the
10 court and case number for that action or proceeding and include a copy of
11 the most recent court order regarding legal decision-making, parenting
12 time and visitation.

13 10. If the appointment of a guardian is necessary due solely to the
14 physical incapacity of the alleged incapacitated person.

15 11. ~~Whether~~ IF the alleged incapacitated person is the principal
16 under a health care power of attorney, and, if so, a copy of that health
17 care power of attorney must be attached to the petition.

18 12. ~~Whether~~ IF the alleged incapacitated person is the principal
19 under a durable power of attorney in which the alleged incapacitated
20 person has nominated someone to serve as guardian, and, if so, a copy of
21 that durable power of attorney must be attached to the petition.

22 13. ~~Whether~~ IF the alleged incapacitated person has a present
23 vested interest in a trust, and, if so, the name of the trust and the
24 current trustee of the trust.

25 C. On the filing of a petition, the court shall set a hearing date
26 on the issues of incapacity. Unless the alleged incapacitated person is
27 represented by independent counsel, the court shall appoint an attorney to
28 represent that person in the proceeding. The alleged incapacitated person
29 shall be interviewed by an investigator appointed by the court and shall
30 be examined by a physician, psychologist or registered nurse appointed by
31 the court. If the alleged incapacitated person has an established
32 relationship with a physician, psychologist or registered nurse who is
33 determined by the court to be qualified to evaluate the capacity of the
34 alleged incapacitated person, the court may appoint the alleged
35 incapacitated person's physician, psychologist or registered nurse
36 pursuant to this subsection. The investigator and the person conducting
37 the examination shall submit their reports in writing to the court. In
38 addition to information required under subsection ~~D~~ F of this section,
39 the court may direct that either report include other information the
40 court deems appropriate. The investigator also shall interview the person
41 seeking appointment as guardian, visit the present place of abode of the
42 alleged incapacitated person and the place where it is proposed that the
43 person will be detained or reside if the requested appointment is made and
44 submit a report in writing to the court. The alleged incapacitated person
45 is entitled to be present at the hearing and to see or hear all evidence
46 bearing on that person's condition. The alleged incapacitated person is

1 entitled to be represented by counsel, to present evidence, to
2 cross-examine witnesses, including the court-appointed examiner and
3 investigator, and to trial by jury. The court may determine the issue at
4 a closed hearing if the alleged incapacitated person or that person's
5 counsel so requests.

6 D. NOTWITHSTANDING SUBSECTION C OF THIS SECTION, IF THE ALLEGED
7 INCAPACITATED PERSON DOES NOT HAVE AN ESTABLISHED RELATIONSHIP WITH A
8 PHYSICIAN, PSYCHOLOGIST OR REGISTERED NURSE WHO IS QUALIFIED TO PERFORM AN
9 INDEPENDENT EVALUATION OF THE CAPACITY OF THE ALLEGED INCAPACITATED
10 PERSON, ON THE FILING OF A PETITION OR ON THE COURT'S OWN MOTION, THE
11 COURT MAY APPOINT A PHYSICIAN, PSYCHOLOGIST OR REGISTERED NURSE TO PERFORM
12 AN INDEPENDENT EVALUATION OF THE ALLEGED INCAPACITATED PERSON'S CAPACITY.
13 THE COURT MAY ORDER THE ALLEGED INCAPACITATED PERSON OR THE PETITIONER, IF
14 THE PETITION IS DENIED, TO PAY THE COST OF THE INDEPENDENT EVALUATION. IF
15 THE COURT DETERMINES THAT IT IS NOT FEASIBLE FOR THE ALLEGED INCAPACITATED
16 PERSON OR THE PETITIONER TO PAY THE COST OF THE INDEPENDENT EVALUATION,
17 THE COURT MAY ORDER THE COUNTY TO PAY REASONABLE COMPENSATION PURSUANT TO
18 SECTION 14-5314.

19 ~~D.~~ E. At the initial hearing on the petition, the court shall read
20 into the record the notice of right to trial by jury as stated in the
21 notice of hearing.

22 ~~E.~~ F. A report filed pursuant to this section by a physician,
23 psychologist or registered nurse acting within that person's scope of
24 practice shall include the following information:

25 1. A specific description of the physical, psychiatric or
26 psychological diagnosis of the person.

27 2. A comprehensive assessment listing any functional impairments of
28 the alleged incapacitated person and an explanation of how and to what
29 extent these functional impairments may prevent that person from receiving
30 or evaluating information in making decisions or in communicating informed
31 decisions regarding that person.

32 3. An analysis of the tasks of daily living the alleged
33 incapacitated person is capable of performing without direction or with
34 minimal direction.

35 4. A list of all medications the alleged incapacitated person is
36 receiving, the dosage of the medications and a description of the effects
37 each medication has on the person's behavior to the best of the
38 declarant's knowledge.

39 5. A prognosis for improvement in the alleged incapacitated
40 person's condition and a recommendation for the most appropriate
41 rehabilitation plan or care plan.

42 6. Other information the physician, psychologist or registered
43 nurse deems appropriate.